



CITY OF HAYWARD

AGENDA REPORT

AGENDA DATE 04/08/03

AGENDA ITEM 4

WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: Director of Community & Economic Development

SUBJECT: Letter of Public Convenience or Necessity for La Salsa Restaurant

RECOMMENDATION:

It is recommended that the City Council adopt the attached resolution authorizing the Planning Director to submit a Letter of Public Convenience or Necessity to the State regarding La Salsa Restaurant.

DISCUSSION:

La Salsa Restaurant is preparing to operate in the new B Street shops across from City Hall. The restaurant will have 52 indoor seats and 18 outdoor seats. Because a restaurant is a primary use in the Central City District, no discretionary permits are required. The restaurant proposes to serve beer and wine along with its food and has applied for the appropriate license (Type 41 – On-Sale Beer & Wine – Eating Place) from the Department of Alcoholic Beverage Control (ABC). In order to secure the licenses, the ABC requires a “Letter of Public Convenience or Necessity” from the City as, per ABC standard, the Downtown census tract is considered to be “over-concentrated” with alcohol establishments.

ABC considers a census tract “over-concentrated” when the ratio of the number of ABC licenses to the population of the census tract in which the business is located exceeds ABC standards. ABC’s system does not take into account whether or not the census tract is zoned primarily for commercial, industrial or residential development. The ratio of ABC licenses to the resident population in a downtown is typically greater than in other areas, but is considered desirable considering its character as an employment, shopping and entertainment center and its daytime population. In this case, there are 38 on-sale licenses in the census tract covering the Downtown area where the ABC standard would allow 6, based solely on the resident population. Notwithstanding the over-concentration provision, a license may be issued when “the local governing body of the area in which the applicant premises are located, or its designated subordinate officer or body, determines that public convenience or necessity would be served by the issuance.”

The Downtown Hayward Core Area Plan adopted in 1992 states, “The consumption of alcohol is a part of community life. ... The successful revitalization of downtown will likely include new restaurants and entertainment facilities, many of which will sell alcoholic beverages and will

hopefully become an asset to downtown.” The Plan recognized that a conditional use permit process addressing City-wide sales of alcoholic beverages was pending. Subsequently, the City Council adopted the “Alcoholic Beverages Outlet Regulations” which require conditional use permits for bars and nightclubs in the downtown and which purposefully exempts “bona fide restaurants.” A bona fide restaurant is a term used by both the City and the ABC to mean a “place which is regularly used and kept open for the primary purpose of serving meals to guests for compensation and does not have a bar, cocktail lounge, or other area designated primarily for the service of alcohol on the premises, ... and which maintains a minimum of 51 percent of its gross receipts from the sale of meals.” La Salsa is considered a bona fide restaurant and, as such, is exempt from the “Alcoholic Beverages Outlet Regulations.”

The City’s General Plan calls for the Downtown to be “a focal point for the City [within a pedestrian-friendly environment] so that it ... provides a venue for cultural vitality, and retains its role as a center for social, political, and other civic functions.” One of the more important business sectors in attracting the community to a downtown is restaurants, like La Salsa.

In recognition of City policies relating to the sale of alcoholic beverages in bona fide restaurants, staff recommends that the City Council authorize the Planning Director to submit a letter to the ABC stating that the issuance of an ABC license to La Salsa would serve the public convenience or necessity. The ABC license would include conditions controlling sale hours, property maintenance and supervision. The La Salsa corporation further restricts the individual restaurants to the sale of closed single-serving containers; the restaurant also may not serve more than two containers to each customer.

Staff sent a letter to Commpre indicating that the owner of La Salsa has requested that the City prepare a letter of Public Convenience or Necessity and offering the opportunity to comment on their request. Commpre responded that it supports the City’s redevelopment plans for Downtown, but that it would like the City Council to consider the following conditions on the license:

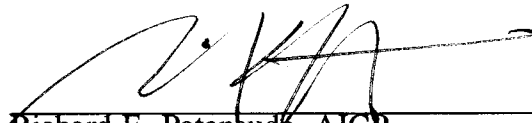
- 1) No off-sale of alcoholic beverages. [Staff does not support this condition; the applicant is applying for an on-sale license only, subject to ABC restrictions.]
- 2) Restrict sale of alcohol to the hours between 10am and 10pm. [ABC will require an end time of 9pm.]
- 3) No advertising of alcoholic beverages on the windows. [Staff supports this condition.]
- 4) No sales of draught beer or pitchers of alcohol. [Staff does not support this condition and La Salsa self-restricts sales to closed single-serve containers.]
- 5) No outside consumption. [Staff supports the ability to consume alcoholic beverages in the outdoor dining area adjacent to the storefront; ABC will permit outdoor consumption.]
- 6) All employees shall attend Responsible Beverage Service training. [Staff supports this condition.]

CONCLUSION

La Salsa Restaurant is a desirable addition to the mix of food service uses in the Downtown. Many restaurant patrons find it desirable to have, and even expect, alcoholic beverage service when dining out. The restaurant is exempt from the Zoning Ordinance provision requiring a Conditional Use

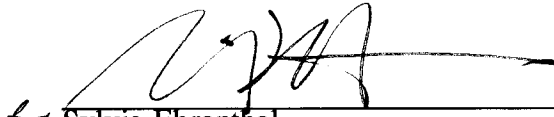
Permit as an alcohol establishment and meets all other ordinance provisions regarding location. Therefore, staff supports the issuance of a Letter of Public Convenience or Necessity.

Prepared by:



Richard E. Patenaude, AICP
Principal Planner

Recommended by:



Sylvia Ehrenthal
Director of Community and Economic Development

Approved by:



Jesus Armas, City Manager

Attachments: Exhibit A. Findings
Exhibit B. Letter from Commpre, dated March 26, 2003
Draft Resolution

4/3/03

FINDINGS OF APPROVAL

LETTER OF CONVENIENCE OR NECESSITY

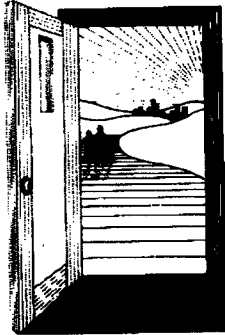
**Bonaventure Foods dba La Salsa (Applicant); Browman Development Company
(Owner)**

792 B Street

Request for a Type 41 License – On-Sale Beer & Wine - Eating Place

- A. Although, according to the State Department of Alcoholic Beverage Control the census tract has an over-concentration of licenses, the proposed use is necessary for public convenience in that it would provide a high-quality eating and drinking establishment and would help promote a lively, pedestrian-friendly atmosphere downtown. The *Downtown Hayward Core Area Plan* adopted in 1992 states, *"The consumption of alcohol is a part of community life. ... The successful revitalization of downtown will likely include new restaurants and entertainment facilities, many of which will sell alcoholic beverages and will hopefully become an asset to downtown."*
- B. The City of Hayward has established that it is desirable that *bona fide* restaurants be allowed to serve alcoholic beverages in that the Zoning Ordinance regulations exempt restaurants from the requirement of a Conditional Use Permit for the purpose of operating as an alcoholic beverage outlet. The proposed establishment complies with the City and State definitions as a "*bona fide* restaurant."
- C. The proposed restaurant, with the availability of alcoholic beverages to its patrons, will not impair the character and integrity of the zoning district and surrounding area in that it would contribute to the mix of retail and residential uses encouraged by the Central City – Commercial (CC-C) District. The restaurant would be a part of a retail shop complex anchored by Albertson's on Mission Boulevard between "A" and "B" Streets.
- D. The proposed use will not be detrimental to the public health, safety, or general welfare in that the use would adhere to all of the operational requirements subject to alcoholic beverage establishments so that the restaurant would be a high quality addition to downtown Hayward. The proposal meets the Zoning Ordinance regulations for alcoholic beverage outlets.
- E. The proposed use will not detrimentally affect the surrounding neighborhood after giving consideration to the distance of the proposed use from schools, public playgrounds and parks, libraries, daycare centers, recreation centers, and other similar uses.

COMPRE



22652 Second Street
Hayward, CA 94541
(510) 247-8207
(510) 247-8210 fax



A program of
Horizon Services, Inc.

March 26, 2003

Dyana Anderly
Planning Department
City of Hayward
777 B. Street
Hayward, CA 94541

Subject: La Salsa Restaurant, 792 B Street

Dear Ms. Anderly:

This letter is in response to Community Prevention of Alcohol-Related Problem's (CommPre) notification of the April 1 City Council hearing regarding La Salsa restaurant at 792 B Street, regarding public convenience and necessity for alcoholic beverage sales. We appreciate notice being sent to CommPre and the City's request for comments.

Downtown Hayward is severely overconcentrated with alcohol outlets. Currently, there are 10 active off-sales licenses (markets, liquor stores), where 4 are allowed and there are 38 on-sale licenses (restaurants, bars), where 6 are allowed. Research indicates that increased alcohol-outlet density contributes to additional crime, such as violent assaults. We have heard many community complaints of crime, public urination, and loitering in the vicinity of the proposed La Salsa restaurant. Residents have stated that they already feel unsafe shopping at the Albertson's because of peddlers and vagrants who often appear intoxicated.

While CommPre supports the City's redevelopment plans for the Downtown area, we would like the City Council to consider the consequences of over concentration and recommend conditions to prevent alcohol-related problems at La Salsa restaurant.

Therefore, we recommend the following conditions be placed on the alcoholic beverage license:

- 1) No off-sales of alcoholic beverages to prevent patrons purchasing alcohol to take home. Albertson's and other outlets already provide off-sales of alcohol in the adjacent building.
- 2) Restrict hours of alcoholic beverage sales from 10am to 10pm. This condition will match the hours of food sales and prevent the establishment from operating as a "bar."
- 3) No advertising of alcoholic beverages on the windows (neon or paper signs).
- 4) No sales of draught beer or pitchers of alcohol.
- 5) No consumption of alcoholic beverages outside of the premises.
- 6) All employees engaged in the dispensing of alcoholic beverages shall attend Responsible Beverage Service training within six months of

approval of this permit. Any employee hired after this permit is approved shall attend Responsible Beverage Service training within six months of his/her hire date. Employees must complete this course every 2 years.

Please don't hesitate to contact me at 510-247-8225 if you have any questions. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Emily Chung', with a stylized flourish at the end.

Emily Chung
Prevention Specialist/Community Organizer

DRAFT



HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE PLANNING DIRECTOR
TO PREPARE A LETTER OF CONVENIENCE OR
NECESSITY FOR LA SALSA RESTAURANT AND SUBMIT IT
TO THE STATE DEPARTMENT OF ALCOHOLIC BEVERAGE
CONTROL

WHEREAS, La Salsa Restaurant has applied for a Type 41-On-Sale Beer & Wine
-Eating Place license from the State Department of Alcoholic Beverage Control (ABC) as it is
preparing to operate in the new B Street shops across the street from City Hall and plans to serve
beer and wine with its food; and

WHEREAS, in order to secure the licenses, the ABC requires a Letter of Public
Convenience or Necessity from the City in which the restaurant has applied; and

WHEREAS, the City and the ABC consider the restaurant to be a "*bona fide*"
restaurant as defined by the ABC, and determines it to be exempt from the "Alcoholic Beverages
Outlet Regulations"; and

WHEREAS, the City Council hereby finds and determines as follows:

- A. Although, according to the State Department of Alcoholic Beverage Control the census tract has an over-concentration of licenses, the proposed use is necessary for public convenience in that it would provide a high-quality eating and drinking establishment and would help promote a lively, pedestrian-friendly atmosphere downtown. The Downtown Hayward Core Area Plan adopted in 1992 states, "The consumption of alcohol is apart of community life, ... The successful revitalization of downtown will likely include new restaurants and entertainment facilities, many of which will sell alcoholic beverages and will hopefully become an asset to downtown."
- B. The City of Hayward has established that it is desirable that bona fide restaurants be allowed to serve alcoholic beverages in that the Zoning Ordinance regulations exempt restaurants for the requirement of a conditional Use Permit for the purpose of operation as an alcoholic beverage outlet. The proposed establishment complies with the City and State definitions as a "bone fide restaurant"
- C. The proposed restaurant, with the availability of alcoholic beverages to its patrons, will not impair the character and integrity of the zoning district and surrounding

area in that it would contribute to the mix of retail and residential uses encouraged by the Central City -Commercial (CC-C) District. The restaurant would be a part of a retail shop complex anchored by Albertson's on Mission Boulevard between "A" and "B" Streets.

- D. The proposed use will not be detrimental to the public, health, safety, or general welfare in that the use would adhere to all of the operational requirements subject to alcoholic beverage establishments so that the restaurant would be a high quality addition to downtown Hayward. The proposal meets the Zoning Ordinance regulations for alcoholic beverage outlets.
- E. The proposed use will not detrimentally affect the surrounding neighborhood after giving consideration to the distance of the proposed use from schools, public playgrounds and parks, libraries, daycare centers, recreation centers, and other similar uses.

NOW, THEREFORE, BE IT RESOLVED that based on the above findings, the City Council of the City of Hayward does hereby authorize the Planning Director to prepare a Letter of Public Convenience or Necessity for La Salsa Restaurant and submit it to the State Department of Alcoholic Beverage Control.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2003

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward